

MAR 14 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:

Williams, Bruce P., et al.

Serial No.: 10/604,566

Group Art Unit: 3782

Filed: July 30, 2003

Examiner: Vanterpool, Lester L.

For: TELESCOPING ROOF RACK ASSEMBLY FOR A VEHICLE
HAVING A TRUCK BED

Attorney Docket No: 81044950

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Jo Anne Croskey
Signature

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

The following Appeal Brief is submitted pursuant to the Notice of Appeal filed on February 12, 2007, for the above-identified application. The Commissioner is hereby authorized to charge the \$500 filing fee to Deposit Account No. 50-0476.

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I. Real Party in Interest

The real party in interest in this matter is Ford Motor Company in Dearborn, Michigan, which is the assignee of the present invention and application.

II. Related Appeals and Interferences

There are no other known appeals or interferences, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

Claims 21-27, 29-33 and 35-47 are currently pending and stand under final rejection, from which appeal is taken. Claims 28 and 34 have been cancelled.

IV. Status of Amendments

A Final Action was mailed on October 11, 2006. No amendments were entered subsequent to the Final Action.

V. Summary of Claimed Subject Matter

Independent Claim 21 is directed to a telescoping roof rack assembly 10 ("rack assembly") for a vehicle 12 having a truck bed 14 (Figs. 1, 2A and 2B; ¶ [0029] and ¶ [0030]). The rack assembly 10 is moveable between a retracted position (Fig. 2A) and an extended position (Fig. 2B), with pillar members 36 adjacent to legs 28 when the rack assembly 10 is moved to the retracted position (Fig. 2A). In particular, the rack assembly 10 includes a first pair of support rails 26, a second pair of support rails 30, one or more pairs of legs 28, and one or more pairs of pillar members 36 (Fig. 1; ¶ [0039] to [0041] and [0044]). The second support rails 30 are telescopically coupled to the first support rails 26 (Figs. 3A and 3B; ¶ [0041]). The legs 28 extend from the first support rails 26 and are attached to a roof 16 of the vehicle 12 (Fig. 1; ¶ [0040]). The pillar members 36 extend from the second support rails 30 and are slidably attached to sidewalls 20 defining a truck bed 14 (Fig. 1; ¶ [0044]).

Claim 22 recites the rack assembly 10 in the retracted position (Figs. 2A, 3A and 3C; ¶ [0007]) with the second support rails 30 retracted substantially within the first support rails 26.

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Claim 23 recites the rack assembly 10 in the extended position (Figs. 2B and 3B; ¶ [0041] and [0042]) with the second support rails 30 extended substantially from the first support rails 26.

Claim 26 is directed to a vehicle 12 (Figs. 1 and 2A-2D) having the rack assembly 10 with two pairs of the legs 28 extending from a front end portion and a rear end portion of the roof 16.

Claim 27 recites the first pair of support rails 26 extending substantially along the length of the roof 16 (Figs. 1 and 2A-2D).

Claim 29 recites the rack assembly 10 in the retracted position with the second pair of support rails 30 extending substantially along the length of the roof 16 (Figs. 2A, 3A and 3C).

Claim 30 recites the rack assembly 10 in the retracted position with the second pair of support rails 30 disposed above the roof 16 (Figs. 2A, 3A and 3C).

Claim 31 recites the rack assembly 10 in the extended position with the second pair of support rails 30 telescopically attached to the first pair of support rails 26 and extending substantially along the length of the truck bed 14 (Figs. 2B and 3B).

Claim 32 recites the rack assembly 10 in the extended position with the second pair of support rails 30 telescopically attached to the first pair of support rails 26 and disposed above the truck bed 14 (Figs. 2B and 3B).

Claim 33 recites the roof 16 having a front end portion and a back end portion, each a pairs of legs 28 extending therefrom (Figs. 1 and 2A-2D).

Claim 35 is directed to a vehicle 12 (Figs. 1 and 2A-2D; ¶ [0029]) having a passenger cab, a roof 16, a truck bed 14, and a telescoping roof rack assembly 10 ("rack assembly"). The rack assembly 10 includes a first pair of support rails 26, a second pair of support rails 30, a pair of legs 28 and a pair of pillar members 36 (¶ [0039] to [0041] and [0044]). The second support rails 30 are telescopically coupled to the first support rails 26, with one or more pairs of legs 28 extending from the first support rails 26 and attached to the roof 16 (¶ [0040] and [0041]). One or more pairs of pillar members 36 extend from the second support rails 30 and are slidably attached to the sidewalls 20 of the truck bed 14 (¶ [0044]). The rack assembly 10 in the retracted position includes the pillar members 36 adjacent to the legs 28, with the first support rails 26 receiving substantially the length of the second support rails 30 (Figs. 2A, 3A and 3C).

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Claim 38 recites the first support rails 26 having one or more cross members 64 (Fig. 1), with one of the cross members 64 adjacent to the pillar members in the retracted position (Fig. 1 and 2A).

Claim 39 recites the rack assembly 10 in the retracted position with the pillar members 36 extending from a frontal portion of the sidewalls 20 (Fig. 2A). Claim 39 also recites the rack assembly 10 in the extended position with the pillar members 36 extending from a rearward end portion of the sidewalls 20.

Claim 40 recites the rack assembly 10 moved between the retracted position (Fig. 2A) with the pillar members 36 extending from a frontal portion of the sidewalls 20 and the extended position (Fig. 2B) with the pillar members 36 extending from a rearward end portion of the sidewalls 20.

Claim 41 is directed to a vehicle 12 (Fig. 1; ¶ [0039] to [0041] and [0044]) including a cab, a roof 16, a truck bed 14, and a telescoping roof rack assembly 10 ("rack assembly") having a roof rack portion 22 and a bed rack portion 24. The roof 16 includes a front portion and a rear portion, with the roof rack portion 22 attached to the roof 16 in a fixed position and extending along the front and rear portions. The bed rack portion 24 is slidably attached to the sidewalls 20 of the truck bed 14 and movable between a forward position and a rearward position. The bed rack portion 24 in the retracted position is adjacent to the cab and extends along the roof (Figs. 2A and 3B).

Claim 42 recites the first support rails 26 with one or more pairs of legs 28 attached to a front-end portion of the roof 16 (Figs. 1 and 2A-2D).

Claim 45 recites the second support rails 30 in the forward position extending over the cab (Figs. 2A, 3A and 3C).

Claim 46 recites the pillar members 36 in the forward position is adjacent to the cab (Figs. 2A, 3A and 3C).

Claim 47 recites the first support rails 26 receiving the second support rails in the forward position (Fig. 2A, 3A and 3C).

VI. Grounds of Rejection to be Reviewed on Appeal

The following issues are presented in this appeal:

- (i) Are claims 21-27, 29-33, 35-37 and 40-47 properly rejected under 35 U.S.C. § 103(a) as being unpatentable over the Boudah patent (U.S. Patent No. 5,143,415) in view of the Burns patent (U.S. Patent No. 3,734,110)?

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- (ii) Are claims 38 and 39 properly rejected under 35 U.S.C. § 103(a) as being unpatentable over the Boudah patent (U.S. Patent No. 5,143,415) in view of the Burns patent (U.S. Patent No. 3,734,110) and further in view of the Aftanas patent (U.S. Patent No. 6,056,176)?

VII. Argument

- (i) Claims 21-27, 29-33, 35-37 and 40-47 are not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over the Boudah patent in view of the Burns patent.

Claim 21, 23-25, and 32

Neither the Boudah patent nor the Burns patent, whether taken singly or in combination with each other, teaches or suggests the claimed legs and pillar members adjacent to each other when the rack assembly is moved to the retracted position. The Examiner cited the Boudah patent (U.S. No. 5,143,415 – Figs. 1, 2 and 5) and relied on the front and rear stanchions 11 for disclosing the claimed legs and pillar members adjacent to each other when the telescoping roof rack assembly is moved to the retracted position. However, in the Boudah patent (Figures 1 and 2), the rack therein includes a front stanchion 11 offset from a rear stanchion 11 by at least one length of tube 17, even with the rack moved to its fully retracted position. In this respect, the front and rear stanchions 11 are not adjacent to each other when the rack is moved to the retracted position, and therefore cannot be relied on for disclosing the claimed legs and pillar members.

Neither the Boudah nor the Burns patent, whether taken individually or in any permissible combination, disclose the claimed first support rails and second support rails telescopically coupled together and movable to a retracted position with the claimed pillar members adjacent to legs. In the Boudah patent, the tubes 17 (Figure 2) therein were relied on for disclosing the claimed first pair of support rails telescopically coupled to the second pair of support rails. However, Figure 2 (bottom illustration) shows only one tube 17 when the rack is in its retracted position. It is clear that one tube 17 cannot be relied on for disclosing both a first support rail and a second support rail telescopically coupled to the first rail. Furthermore, stanchions 11 on opposing ends of tube 17 are not adjacent to each other and cannot be relied on for disclosing the claimed pillar members and legs.

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In the Boudah patent, stanchions 11 therein were cited for disclosing the claimed pillar members being substantially longer than the legs. However, in the Boudah patent, the stanchions 11 are all substantially equal in length.

Claim 22 and 47

Neither the Boudah patent nor the Burns patent, whether taken individually or in any permissible combination, teaches or suggests the claimed second pair of support rails retracted substantially within the first pair of support rails, with the pillar members extend from the second support rails and slidably attached to sidewalls defining a truck bed. In particular, in the Boudah patent, the stanchions 11 therein do not extend from inserts 18 that are retracted within tubes 17 but rather from the tubes 17 themselves.

Claim 26, 33 and 42

Neither the Boudah patent nor the Burns patent, whether taken singly or in combination, discloses the claimed pair of legs extending from the front-end portion of the roof. In the Burns patent, the upright members 11 therein extend from a rear portion of the roof rather than a front-end portion of the roof.

Claim 27

None of the cited art, whether taken individually or in any permissible combination, discloses the claimed first pair of support rails extending substantially along the length of the roof and telescopically coupled to the second pair of support rails. For instance, in the Boudah patent, the rack therein extends along the length of the truck bed rather than the roof.

Claims 29 and 30

Neither the Boudah patent nor the Burns patent, whether taken singly or in combination, discloses the claimed rack assembly in the retracted position with the second pair of support rails extending substantially along the length of the roof. Likewise, none of the cited art discloses the claimed rack assembly in the retracted position with the second pair of support rails disposed above the roof.

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Claim 31

Neither the Boudah patent nor the Burns patent, whether taken individually or in any permissible combination, discloses the rack assembly in the extended position with the second pair of support rails extending substantially along the length of the truck bed. In the Boudah patent (Figs. 1 and 2), the structure in its extended position includes three pairs of tubes 17, 18 that collectively extend along the length of the truck bed. Each pair of tubes 17, 18 extends along no more than about one-third of the length of the truck bed. For these reasons, the tubes 17, 18 are substantially different than the claimed single pair of second support rails and cannot be relied on for disclosing the same.

Claims 35-37 and 40

Appellants submit that Claims 35-37 and 40 are allowable for the same reasons set forth above for Claims 21, 22 and 47.

Claims 41, 43 and 44

Neither the Boudah patent nor the Burns patent, whether taken individually or in any permissible combination, discloses the roof having a front portion and a rear portion, with a roof rack portion attached to and extending along the front and rear portions. In the Burns patent, the rack therein is attached only to a rear portion of the roof and extends across only the same.

Claim 45

None of the cited art, whether taken singly or in combination, discloses the claimed second support rails in the forward position extending over the cab. In the Boudah patent, the insert 18 therein in a retracted position extends over the truck bed rather than the cab.

Claim 46

Neither the Boudah patent nor the Burns patent, whether taken individually or in any permissible combination, discloses the claimed pillar members 36 moved to the forward position adjacent to the cab. In the Boudah patent (Figs. 1 and 2), the rear stanchions 11 that are moved to the retracted position are offset from the cab by at least one length of tube 17 and therefore are not adjacent to the cab.

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- (ii) Claims 38 and 39 are not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over the Boudah patent in view of the Burns patent and further in view of the Aftanas patent.

The Boudah patent, the Burns patent, and the Aftanas patent, whether taken individually or in any permissible combination, do not disclose the legs and pillar members adjacent to each other when the telescoping roof rack assembly is moved to the retracted position. In the Boudah patent (Figs. 1 and 2), the rack therein includes a front stanchion 11 offset from a rear stanchion 11 by at least one length of tube 17, even with the rack moved to its fully retracted position.

None of the cited art, whether taken singly or in combination, teaches or suggests the claimed first pair of support rails telescopically coupled to the second pair of support rails, with pillar members extending from the second support rails and being adjacent to legs extending from the first support rails when the rack is in a retracted position. Namely, in the Boudah patent (Figure 2 - bottom illustration), only one tube 17 extends between stanchions when the rack is in its retracted position. It is understood that one tube 17 cannot be relied on for disclosing both a first support rail and a second support rail telescopically coupled to the first rail.

None of the cited art, whether taken individually or in any permissible combination, discloses the claimed second pair of support rails retracted substantially within the first pair of support rails, with pillar members extending from second support rails and slidably attached to sidewalls defining a truck bed. For instance, in the Boudah patent, the inserts 18 therein do not have stanchions 11 extending therefrom that are slidably attached to sidewalls of a truck bed.

VIII. Claims Appendix

A copy of the claims involved in this appeal, namely claims 1-20, is attached hereto as Claims Appendix.

IX. Evidence Appendix

None.

X. Related Proceedings

None.

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XI. Conclusion

For the reasons advanced above, Appellants respectfully contend that each claim is patentable. Therefore reversal of the rejection is requested.

Respectfully submitted,



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Date: March 14, 2007

CLAIMS APPENDIX

Claim 21 (Previously Presented): A telescoping roof rack assembly for a vehicle having a truck bed, comprising:

a first pair of support rails;

a second pair of support rails telescopically coupled to said first pair of support rails;

at least one pair of legs extending from said first pair of support rails and attached to a roof of said vehicle; and

at least one pair of pillar members extending from said second pair of support rails and slidably attached to a pair of sidewalls defining said truck bed of said vehicle;

said at least one pair of pillar members substantially longer than said at least one pair of legs;

said telescoping roof rack assembly moveable between a retracted position and an extended position;

said telescoping roof rack assembly in said retracted position with said at least one pair of pillar members adjacent to said at least one pair of legs.

Claim 22 (Previously Presented): The telescoping roof rack assembly recited in claim 21 wherein said telescoping roof rack assembly in said retracted position comprises said second pair of support rails retracted substantially within said first pair of support rails.

Claim 23 (Previously Presented): The telescoping roof rack assembly recited in claim 21 wherein said telescoping roof rack assembly in said extended position comprises said second pair of support rails substantially extended from said first pair of support rails.

Claim 24 (Previously Presented): The telescoping roof rack assembly recited in claim 21 wherein said first pair of support rails and said second pair of support rails have an intermediate pair of support rails slidably attached therebetween.

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Claim 25 (Previously Presented): A vehicle comprising:
a passenger cab;
a roof extending over said passenger cab;
a truck bed with a pair of sidewalls extending rearward from said passenger cab;
and
said telescoping roof rack assembly recited in claim 21;
said at least one pair of legs attached to said roof;
said at least one pair of pillar members slidably attached to said pair of sidewalls.

Claim 26 (Previously Presented): The vehicle recited in claim 25 wherein said roof has a front end portion and a back end portion with two of said pairs of legs extending therefrom.

Claim 27 (Previously Presented): The vehicle recited in claim 25 wherein said first pair of support rails extends substantially along the length of said roof.

Claim 28 (Cancelled)

Claim 29 (Previously Presented): The vehicle recited in claim 25 wherein said telescoping roof rack assembly in said retracted position comprises said second pair of support rails extending substantially along the length of said roof.

Claim 30 (Previously Presented): The vehicle recited in claim 25 wherein said telescoping roof rack assembly in said retracted position comprises said second pair of support rails disposed above said roof.

Claim 31 (Previously Presented): The vehicle recited in claim 25 wherein said telescoping roof rack assembly in said extended position comprises said second pair of support rails extending substantially along the length of said truck bed.

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Claim 32 (Previously Presented): The vehicle recited in claim 25 wherein said telescoping roof rack assembly in said extended position comprises said second pair of support rails disposed above said truck bed.

Claim 33 (Previously Presented): The vehicle recited in claim 25 wherein said roof has a front end portion and a back end portion with two of said pairs of legs extending therefrom.

Claim 34 (Cancelled)

Claim 35 (Previously Presented): A vehicle comprising:

a passenger cab;

a roof extending over said passenger cab;

a truck bed with a pair of opposing sidewalls extending rearward from said passenger cab; and

a telescoping roof rack assembly comprised of a first pair of support rails, a second pair of support rails, at least one pair of legs, and at least one pair of pillar members;

said second pair of support rails telescopically coupled to said first pair of support rails;

said at least one pair of legs extending from said first pair of support rails and attached to said roof of said vehicle;

said at least one pair of pillar members extending from said second pair of support rails and slidably attached to a pair of sidewalls defining said truck bed of said vehicle;

said at least one pair of pillar members substantially longer than said at least one pair of legs;

said telescoping roof rack assembly moveable between a retracted position and an extended position;

said telescoping roof rack assembly in said retracted position with said at least one pair of pillar members substantially adjacent to said pair of leg portions;

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said telescoping roof rack assembly in said retracted position with said first pair of support rails receiving substantially the length of said second pair of support rails.

Claim 36 (Previously Presented): The vehicle recited in claim 35 wherein said first pair of support rails are positioned substantially parallel to each other and generally along a longitudinal axis of the vehicle.

Claim 37 (Previously Presented): The vehicle recited in claim 35 wherein said second pair of support rails are positioned substantially parallel to each other and generally along a longitudinal axis of the vehicle.

Claim 38 (Previously Presented): The vehicle recited in claim 35 wherein said first pair of support rails has at least two cross members extending therebetween.

Claim 39 (Previously Presented): The vehicle recited in claim 38 wherein one of said cross members is adjacent to said pillar members in said retracted position.

Claim 40 (Previously Presented): The vehicle recited in claim 35 further comprising:

said telescoping roof rack assembly in said retracted position with said at least one pair of pillar members extending from a frontal portion of said pair of sidewalls; and

said telescoping roof rack assembly in said extended position with said at least one pair of pillar members extending from a rearward end portion of said pair of sidewalls.

Claim 41 (Previously Presented): A vehicle comprising:

a cab;

a truck bed with a pair of sidewalls extending from said cab;

said cab having a roof with a front portion and a rear portion; and

a telescoping roof rack assembly having a roof rack portion and a bed rack portion;

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said roof rack portion attached to said roof in a fixed position extending along said front portion and said rear portion;

said bed rack portion slidably attached to said pair of sidewalls;

said bed rack portion movable between a forward position and a rearward position on said pair of sidewalls;

said bed rack portion in said forward position adjacent to said cab and extending along said roof.

Claim 42 (Previously Presented): The vehicle recited in claim 41 wherein said roof rack portion includes a first pair of support rails with at least one pair of legs attached to said front end portion of said roof.

Claim 43 (Previously Presented): The vehicle recited in claim 42 wherein said bed rack portion includes a second pair of support rails with at least one pair of pillar members slidably attached to said pair of sidewalls.

Claim 44 (Previously Presented): The vehicle recited in claim 43 wherein said second pair of support rails is telescopically attached to said first pair of support rails.

Claim 45 (Previously Presented): The vehicle recited in claim 44 wherein said second pair of support rails in said forward position extends over said cab.

Claim 46 (Previously Presented): The vehicle recited in claim 43 wherein said at least one pair of pillar members in said forward position is adjacent to said cab.

Claim 47 (Previously Presented): The vehicle recited in claim 43 wherein said first pair of support rails receives said second pair of support rails in said forward position.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS

None

MAR 14 2007

PTO/SB/17 (02-07)

Approved for use through 02/28/2007. OMB 0851-0032
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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4918).**FEE TRANSMITTAL**
For FY 2007☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 500.00

Complete if Known

Application Number	10/604,566
Filing Date	July 30, 2003
First Named Inventor	Bruce P. Williams
Examiner Name	Vanterpool
Art Unit	3782
Attorney Docket No.	81044950

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 06-1510 Deposit Account Name: Ford Motor Company

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

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FEE CALCULATION**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 20 or HP = _____ x _____ = _____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 3 or HP = _____ x _____ = _____

HP = highest number of independent claims paid for, if greater than 3.

Small Entity

Fee (\$)

50 25

200 100

360 180

Multiple Dependent Claims

Fee (\$)

Fee Paid (\$)

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
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- 100 = _____ / 50 = _____ (round up to a whole number) x _____ = _____

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appeal Brief

Fees Paid (\$)

500.00

SUBMITTED BY

Signature		Registration No. 53,053 (Attorney/Agent)	Telephone 248-223-9500
Name (Print/Type)	Vincent C. Ilagan	Date	March 14, 2007

This collection of information is required by 37 CFR 1.138. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 36 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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